

APPLICANTS:
James & Anna Genna

REQUEST: A variance to permit a
patio room within the required 35 foot
rear yard setback in the R3 District

HEARING DATE: August 27, 2007

BEFORE THE
ZONING HEARING EXAMINER
FOR HARFORD COUNTY
BOARD OF APPEALS

Case No. 5609

ZONING HEARING EXAMINER'S DECISION

APPLICANT: James Genna

CO-APPLICANT: Anna Genna

LOCATION: 213 Suitland Place – Constant Friendship, Abingdon
Tax Map: 61 / Grid: 1E / Parcel: 378 / Lot: 58
First (1st) Election District

ZONING: R3 / Urban Residential District

REQUEST: A variance, pursuant to Section 267-36(B), Table VI, of the Harford County Code, to permit a patio room within the required 35 foot rear yard setback (27 foot setback proposed), in the R3 District.

TESTIMONY AND EVIDENCE OF RECORD:

James Genna, Co-Applicant, described the subject parcel as a 7,500 square foot lot improved by a two-story house and freestanding shed. The Applicants and their son reside on the property, which they purchased in 1990. Mr. Genna described his property as a “triangle-type lot” which fronts on the cul-de-sac of Suitland Place.

When originally built the house also was improved by a deck which was constructed to the rear of the house. However, the Applicants have found it to be increasingly difficult to enjoy the deck because of its constant exposure to the sun. Accordingly, the deck is only used occasionally. Furthermore, and perhaps more importantly, the subject property backs up to a berm which is part of open space which separates the subject property from MD Route 24, which is at a somewhat lower elevation than the subject property.

Mr. Genna described the traffic noise emanating from MD Route 24 as terrible, and as having a drastic and deleterious impact on his family's ability to enjoy the outdoor spaces around their home. This constant noise makes it virtually impossible for the Applicants to enjoy the outdoors.

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Enclosing the existing deck with a four season room would enable the Applicants to have the full time use of the deck, reduce the impact of the noise coming from MD Route 24.

The neighbors on both sides of the subject property have expressed no objection to the requested variance. The Constant Friendship Homeowners Association has agreed to allow the improvement.

The enclosed four season room will be mainly glass. The glass itself will be double-pane, and of heavy duty construction due to the noise from MD Route 24. The roof will be of a shed type construction similar to that of the existing home.

Next for the Applicant testified Gerald Anderson of Champion Patio and Window Company. Mr. Anderson, whose firm will be installing the enclosed sunroom, described the lot as triangular in shape. The house is set approximately 5 feet off, i.e., behind, the front yard setback line, in order to meet the side yard setback requirements. Mr. Anderson sees no good reason why the lot was created with a triangular shape, but its configuration causes the house to be set back farther than would otherwise be the case. If the house were not set back off the front yard setback line, the variance would not be necessary.

The sliding glass door on the house dictates the location of the enclosed sunroom. There is no other practical location on the lot for the construction of a sunroom or, for that matter, for the deck on which the sunroom is to be constructed.

Next for the Harford County Department of Planning and Zoning testified Anthony McClune. Mr. McClune reiterated the Department's position that the lot is unique. The configuration of the parcel is narrow in front, and much wider to the rear. Because of this narrow frontage the house is located not on the front yard setback line, but significantly behind the front yard setback line.

Mr. McClune also noted that the berm behind the house was apparently designed as a noise barrier between MD Route 24 and this and other similarly situated homes. However, the berm is much shallower at the Applicants' property than it is in other places along Route 24. Accordingly, the berm provides less protection for the subject property and is accordingly exposed to traffic noise more than other homes. The traffic noise is significant at this location.

Mr. McClune does not believe that the proposed variance will have a negative impact on any other owner or neighbor. Other homes in the subdivision have additions similar to that proposed by the Applicants. The Department recommends approval.

No testimony or evidence was given in opposition.

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APPLICABLE LAW:

Section 267-11 of the Harford County Code allows the granting of a variance to the requirements of the Code:

“Variances.

- A. Except as provided in Section 267-41.1.H., variances from the provisions or requirements of this Part 1 may be granted if the Board finds that:*
 - (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Part 1 would result in practical difficulty or unreasonable hardship.*
 - (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Part 1 or the public interest.*
- B. In authorizing a variance, the Board may impose such conditions regarding the location, character and other features of the proposed structure or use as it may deem necessary, consistent with the purposes of the Part 1 and the laws of the state applicable thereto. No variance shall exceed the minimum adjustment necessary to relieve the hardship imposed by literal enforcement of this Part 1. The Board may require such guaranty or bond as it may deem necessary to insure compliance with conditions imposed.*
- C. If an application for a variance is denied, the Board shall take no further action on another application for substantially the same relief until after two (2) years from the date of such disapproval.”*

FINDINGS OF FACT AND CONCLUSIONS OF LAW:

As do many other homes in Harford County, the Applicants enjoy an approximately 12 foot by 13 foot deck to the rear of their house. The Applicants, however, suffer from two relatively unique circumstances. The first, and less important from a variance analysis, is that their home backs up to MD Route 24, a heavily trafficked, major arterial road. The proximity of the residence to Route 24 is a reason for the Applicants’ proposal that they be allowed to construct an enclosed, four season sunroom on the deck. The Co-Applicant testified that the noise from Route 24 is extreme. One can easily believe that, at certain times of the day, traffic noise must be relatively intense.

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However, noise is not a reason for granting of a variance. The Applicants must show some unusual feature of the property which would cause them a practical difficulty or unusual hardship when the subdivision regulations are applied to their proposed improvement. The Applicants have, in fact, made a showing that their lot is unique. It is triangular in shape, with a much more narrow front lot line than rear lot line. While their home sits on a cul-de-sac, there is no apparent reason, when one reviews the site plan, as to why the home has such a narrow frontage. Nevertheless, the impact of this narrow frontage caused the home itself to be set further off the front yard lot line. This location heavily constrains the allowable building envelope. If it were not for the home being located behind the front yard lot line the requested 8' variance would not be necessary.

The Applicants suffer a hardship from this unusual lot feature in that they cannot build a sunroom, similar to others within the neighborhood and within Harford County. It is further found that the relief requested is the minimum necessary to relieve the practical difficulty, and there will be no adverse impact.

CONCLUSION:

It is accordingly recommended that the requested variance be granted, subject to the Applicants obtaining all necessary permits and inspections for the construction of the sunroom.

Date: September 4, 2007

ROBERT F. KAHOE, JR.
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on OCTOBER 4, 2007.